

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Benjamin Marker Yerby IV,)	
)	
Plaintiff,)	
)	Civil Action No. 2:22-cv-4175-BHH
v.)	
)	
Summerville Police Department;)	<u>ORDER</u>
PFC Andrew Myers 134; and)	
Dorchester County Sheriff's Office,)	
)	
Defendants.)	
_____)	

This matter is before the Court for review of the Report and Recommendation ("Report") of United States Magistrate Judge Mary Gordon Baker, which was made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 for the District of South Carolina. In her Report, which was filed on February 27, 2023, the Magistrate Judge recommends that the Court summarily dismiss this case, without prejudice and without leave to amend, for failure to comply with an order of this Court, and for failure to state a plausible claim pursuant to 42 U.S.C. § 1983. (ECF No. 8.) Attached to the Report was a notice advising Plaintiff of his right to file written objections to the Report within fourteen days of receiving a copy. (*Id.* at 10.) On March 16, 2023, the Magistrate Judge's Report was returned to the Court as undeliverable and marked return to sender. (ECF No. 10.)

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. See *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The Court may

also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made. In the absence of specific objections, however, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

At this time, it appears that Plaintiff has failed to keep the Court advised of any change of address, and Plaintiff has not filed any objections to the Report. Because no objections have been filed, the Court has reviewed the Magistrate Judge’s findings and recommendations for clear error. Finding none, the Court agrees with the Magistrate Judge, for the reasons set forth in her Report, that Plaintiff’s claims against Defendant are subject to summary dismissal for failure to comply with an order of the Court, pursuant to Rule 41(b), and for failure to state a claim. Accordingly, the Court adopts the Magistrate Judge’s Report (ECF No. 8) and incorporates it herein by reference, and the Court dismisses this action without prejudice; without issuance and service of process; and without further leave to amend.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

March 28, 2023
Charleston, South Carolina

